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File No. O. Mataclars 51

Legal Department

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Subject:—

Opinions Under the

Mataclars Act, 1887

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Legal Department.

Validity of adoption for purposes of succession to Mata-
Matadars Act, 1887.

It apperas that one Shri Jhaverbhai Nathabhai possessed of certain properties died in 1939, leaving him surviving a senior widow named Bai Diwali, and a junior widow named Bai Jiba. Prior to his death he had executed a Will on 25th June 1938, conveying his properties to his junior widow Bai Jiba. On 11th April 1942 Bai Diwali adopted Patel Parshottam as a son to her deceased husband. Soon after this adoption the Junior widow Bai Jiba and one Patel Dahyabhai files a suit in the Court of the Civil Judge, Junior Division, Borsad, for a declaration that the adoption of was invalid. On 27th April 1943 Patel Parshottam and Bai Diwali Parshottam by Bai Diwali filed a suit claiming various declarations and possession of the properties. In this suit Patel Dahyabhai who was impleaded as a defendant set up his adopti on by Bai Jiba. These two suits were heard together with the consent of the parties. The Trial Judge held the adoption of Patel Parshott -am as valid and dismissed the suit filed by Bail Jiba and Patel Dahyabhai. Bai Jiba and Patel Dahyabhai filed an appeal to the High Court. Patel Parshottam and Bai Diwali who were plaintiffs in the other suit cross-object ed and the cross-objections and the appeal were heard together by the High Court. Holding that the adoption of Patel Parshottam was invali d., the High Court observed that "the adoption of Patel Dahyabhai took place not at the time when suit No. 262 of 1942 was filed and in suit No. 10 of 1943, defendant No. 2 relied upon his own adoption. If the adoption of Patel Parshottam is invalid, the adoption of Patel

Dahyabhai would, it is argued, be good, the factum of his adoption not being disputed. But if the question is to be decided in these proceedings it may involve various other considerations and we need not, and we do not propose to go into the question whether the adoption of defendant No. 2 Patel Dahyabhai is valid". The Collector in his order dated the 4th September 1950 observes: "The High Court has not given a finding regarding the validity of adoption of Dahyabhai by Bai Jiba. But as the adoption of Shri Parshottam by Bai Diwali the senior widow of Shri Jhaverbhai Nathabhai has been considered to be invalid it follows that the adoption of Shri Dahyabhai by Bai Jiba the junior widow is to be considered valid". R.L.A. is requested to advise whether the view expressed by the Collector that the adoption of Shri Dahyabhai is to be considered valid, is correct.

2 It is true that the High Court has held that the adoption of Shri Parshottam by Bai Diwali was invalid, but it would not follow therefrom that the adoption of Shri Dahyabhai by Bai Jiba(which point was kept open by the High Court) is valid, for even though the adoption of Shri Parshottam is invalid it does not necessarily follow that the adoption of Shri

Dahyabhai should be valid. The factum of ado
ption is different from the validity of the
adoption. Consequently, the view taken by
the Collector is not correct.

Id./.....

Additional Secretary to Government.

U.R. to R.D.No. 3815, dated the 7th March 1951.

SMR 23-6-56
4 Copies.

R.I.No. 6645 dt. 4-4-51.

Submitted.

Please see Collr of Kaira's letter at p. 53 ante. The facts are as follows:-

On the death of Bai Mani, widow of Hathib hai Dhoribhai, a representative Matadar of Tranja, Taluka Matar, a dispute arose as to who should inherit the mata as there was no male heir to inhe rit it. The question for decision was whether the right of the daughter should be postponed in the order of succession to any other male member of the family under section 2 of the Mata Act. The District Dy. Collr directed that Mata should be entered in the name of one Ranchhodbhai Veribhai Patel, the present appellant who is a member of th family of the original Representative Matadar Ganeshji. But, ona representation by one Kashibh -ai Vaghjibhai, the matter was reconsidered by the Collector who decided that the Mata should remain with Bai Dahi, as there was no other male member in the family. Being aggrieved by the said order of the Collector, Ranchhodbhai Veribhai has now come in appeal. R.D. is of the view that the Coll 's order is proper and needs no interference. Th R.L.A. is requested to advise before the appeal i dismissed.

L.D.

Seen and returned.

2 The view taken by the R.D. is correct.

Sd./B.D.M.
Addl.Secy. to Govt.

U.R. to R.D.No. 8089 dt., 22-5-1951.

SMR 23-6-56, 4 Copies.

Office of the R.L.A.

Under the proviso (b) to section 26 of the Matadars Act, 1887 if a representati -ve matadar dies during his term of office, th -e deputy, if any, officiating in his stead shall cease to officiate, and the successor of the representative matadar shall subject to the provisions of section 19, officiate in person for the residue of the said term, or a deputy shall be appointed by him or by the Collector in his stead for the said period, according to the provisions of sections 20, 21 and 22. A representative matadar can be under the first paragraph of section 17 and when he is so elected elected, he would be enjoying the right of office according to the turnof his matadar family, Paragraph 2 of that section provides that if a majority of the said matadars fail within such reasonable period as shall be pre scribed by the Collector inthis behalf, to nominate some member of the matadar family aforesaid for the vacancy, [redacted] nominated is disqualified for office, the right of office [redacted]- or, if the person shall vest in the representative matadar of the said family. If there is failure tonominate some member of the matadar family, or the person so nominated is disqualified, then the right of office shall vest in the representative matadar of the family which has its turn to officiate. It is only when a representative matadar is appointed under the latter paragra ph of section 17 that the proviso (b) to sec tion 26 would apply and not otherwise (see al so section 25). In case which was considered by the R.L.A. in his opinion No. 4898 dt. 1st May 1939

the representative matadar was elected by a majo rity of matadars under the first paragraph of section 17 of the Matadars Act. It is, therefore, clear that the representative matadar being elec ted under the first paragraph of section 17 and not under the latter paragraph of that section the proviso(b) to section 26 was inapplicable to the representative matadar in that case. The view tak en by the Collector of Ahmedabad is not correct and there is no substance in the grounds urged in his letter. The opinion of R.L.A. No. 4898, dated the 1st May 1939 does not require any modification.

M./..... 15/10

Remembrancer of Legal Affairs.

U,R. to R.D.No. 16295,dated the 15th October 1951.

SMR 23-6-56
4 Copies.